HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 203 OF 2001.

Maharashtra State Road Transport
Corporation Through: Divisional
Traffic Officer, Maharashtra,
Thane, Head Office At Bombay. ..Appellants.

VERSUS.

1. Kishore Kondiram Jagade,
2. Rajendra Tukaram Salunkhe,
3. Uday Shivram Mahadik,
4. Ravindra Shankar Padwal,
5. Shrikant Harichand Shinde,
6. Naresh Laxman Zaware,
7. Santosh Laxman Mali,
8. Naresh Pundlik Thale,
9. Ramesh Nathuram Naik,
10. Santosh Gangaram Patil,
11. Dipak Ganpat Vartak,
12. Vithal Hasha Gaikwad,
13. Ashok Babanrao Dudhsagar,
14. Sandip Gopinath Kadam,
15. Mohan Ganpat Kadam,
16. Mohan Rama Patil,
17. Sanjay Tukaram Shedge,
18. Sambhaji Savalaram Gharat,
19. Ramdas Jagganath Mhatre,
    All: Raigad.
20. Presiding Officer,
    Industrial Court, Thane. ..RESPONDENTS.

Mr. G.S.Hegde for appellant.
Mr. S.M.Dharap with Mr. G.S.Godbole for respondent Nos. 1 to 19.

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WITH
LETTERS PATENT APPEAL NO. 204 OF 2001.

1. Maharashtra State Road Transport,
Corporation, Bombay Central Bombay.

2. Divisional Controller,
Bombay Division,

MSRTC Bombay.

3. Depot Manager,
Kurla Nehru Nagar Depot,
MSRTC Kurla, Bombay.

4. Depot Manager,
Parel Depot, MSRTC,
Parel, Bombay.

5. Depot Manager,
Bombay Central Depot,
MSRTC Bombay Central,
Bombay.

6. Depot Manager,
Panvel Depot,
MSRTC, Panvel,
Dist: Raigad. ..APPELLANTS.

VERSUS.

Casteribe Rajya Parivahan
Karmchari Sanghatana,
C-5, Bldg.No.26, New Panvel,
Dist: Raigad. ..RESPONDENT.

Mr. G.S.Hegde for the appellant.
Mr. K.S.Bapat i/b. M/s. Sanjay Udeshi & Co., for the respondent.

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WITH
LETTERS PATENT APPEAL NO. 205 OF 2001.

1. Maharashtra State Road
Transport Corporation,
Bombay.

2. Divisional Controller,
Bombay Central,
MSRTC Bombay. ..APPELLANTS.

VERSUS.

Casteribe Rajya Parivahan
Karmchari Sanghatana,
C-5, Bldg.No.26, New Panvel,
Dist: Raigad. ..RESPONDENT.

Mr. G.S.Hegde for appellant.
Mr. S.M.Dharap with Mr. G.S.Godbole for respondent.

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WITH
LETTERS PATENT APPEAL NO. 206 OF 2001.

1. Maharashtra State Road
Transport Corporation,
Bombay.

2. Divisional Controller, ..APPELLANTS.

VERSUS.

Casteribe Rajya Parivahan
Karmchari Sanghatana,
C-5, Bldg.No.26, New Panvel,
Dist: Raigad. ..RESPONDENT.

Mr. G.S.Hegde for the appellant.
Mr. K.S.Bapat i/b. M/s. Sanjay Udeshi & Co., for the
respondent.

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WITH
LETTERS PATENT APPEAL NO. 207 OF 2001.

Maharashtra State Road Transport
Corporation Through: Divisional
Traffic Officer, Maharashtra,
Thane, Head Office At Bombay. ..Appellants.

VERSUS.

1. Kishore Kondiram Jagade,
2. Rajendra Tukaram Salunkhe,
3. Uday Shivram Mahadik,
4. Ravindra Shankar Padwal,
5. Shrikant Harichand Shinde,
6. Naresh Laxman Zaware,
7. Santosh Laxman Mali,
8. Naresh Pundlik Thale,
9. Ramesh Nathuram Naik,
10.Santosh Gangaram Patil,
11.Dipak Ganpat Vartak,
12.Vithal Hasha Gaikwad,

13.Ashok Babanrao Dudhsagar,
14.Sandip Gopinath Kadam,
15.Mohan Ganpat Kadam,
16.Mohan Rama Patil,
17.Sanjay Tukaram Shedge,
18.Sambhaji Savalaram Gharat,
19.Ramdas Jagganath Mhatre,
All: Raigad. ..RESPONDENTS.

Mr. G.S.Hegde for appellant.
Mr. S.M.Dharap with Mr. G.S.Godbole for respondent Nos. 1 to 19.

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CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: MAY 6, 2005.

ORAL JUDGMENT (PER S.B.MHASE,J.).

1. These Letters Patent Appeals are directed against the common judgment delivered by the learned Single Judge in Writ Petition Nos. 3831 of 1995, 2441 of 1995, 2442 of 1995 and 5801 of 1999 and 1886 of 1997. The learned Single Judge has disposed of these writ petitions by a common judgment, because the common point had arisen for consideration. The matter pertains to the employees of the Maharashtra State Road Transport Corporation (for the sake of brevity, hereinafter referred to as **"the Corporation")**. The employees involved in these writ petitions are the cleaners engaged by the Corporation for cleaning the buses and other premises of the Corporation on piece rate basis during the shift. The Caste Tribe

Parivahan Karmchari Sanghatana (for the sake of brevity, hereinafter referred to as "the Union".) is a registered Union under the Trade Unions Act and was functioning in the Corporation. The said Union had filed Complaint (ULP) No.542 of 1991 and Complaint (ULP) No. 574 of 1991 before the Member Industrial Court, Thane. The Union has alleged that the Corporation had/is indulged and indulging in the unfair labour practice under Item Nos. 5, 6, 9 & 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the said Act".). Complaint (ULP) Nos. 542 and 574 of 1991 were heard by the Member, Industrial Court and by a common judgment dated 25.4.1992 disposed of those complaints. The Member Industrial Court has found that the Union has failed to prove unfair labour practice under Item Nos. 9 & 10 of the said Act. The court has further held that the Complainant - Union was not recognised under the said Act, therefore, in view of the provisions of Section 21 of the said Act, Union had no authority to file the complaint for employees with respect to unfair labour practice under Item No. 6 of the said Act and no relief was given. However, by partially allowing the complaint, the Court found that the Corporation committed unfair labour practice under Item No. 5 of the said Act by paying unequal wages to the casual labourers as compared to the permanent sweepers and cleaners.

Therefore, the trial court directed that the casual labourers doing the work of cleaning the buses be paid equal wages as being paid to the permanent labourers doing the work of sweepers.

2. Being aggrieved with this judgment and order of the Member Industrial Court, Writ Petition No. 2441 of 1995 was filed by the Corporation. Writ Petition Nos. 2442 of 1995 and 3831 of 1995 were filed by the Compalainant - Union, since the complaint was dismissed by the Member, Industrial Court in respect of Item Nos. 6 & 9 of Schedule- IV of the said Act. LPA No. 204 of 2001 is directed against Writ Petition No. 3831 of 1995. LPA No. 205 of 2001 is directed against Writ Petition No. 2441 of 1995 and LPA No. 206 of 2001 is directed against Writ Petition No. 2442 of 1995. They are before this court for consideration.

3. Apart from above referred LPAs, which have arisen from ULP Complaint No. 542 of 1991 and 574 of 1991 filed by the Union, 19 other employees who were doing the work of sweeper had filed a complaint (ULP) No. 442 of 1992 before the Member Industrial Court against the Divisional Controller, Maharashtra Road Transport Corporation, Thane. In the said complaint, the same dispute as mentioned in (ULP) No. 542 & 574 of 1991 was

raised. The said complaint was disposed of by the Member Industrial Court, Thane by order dated 6.2.1997 holding that the Corporation committed unfair labour practice under Item No.6 of Schedule- IV of the said Act and directed the Corporation to give to the complainants with effect from 3.8.1992, ie., from the date of filing of the complaint the status of permanent employee and other monitory benefits equal to the regular sweepers. The Member, Industrial Court, however, dismissed the said complaint holding that the complainant has failed to prove unfair labour practice under Item Nos. 5 & 9 of Schedule-IV of the said Act. The Corporation filed Writ Petition No. 1886 of 1997 as against the said dismissal of Complaint (ULP) No. 442 of 1991. The employees also filed Writ Petition No.5801 of 1999 since their complaint under Item Nos. 5 & 9 of the said Act was dismissed. LPA 203 of 2001 is directed as against Writ Petition No. 1886 of 1997 and LPA No.207 of 2001 is directed against Writ Petition No. 5801 of 1999. Thus, it will be revealed that all these LPAs. have arisen as stated above, from the original proceedings in (ULP) Complaint Nos. 542 of 1991, 574 of 1991 and 442 of 1992 filed before the Member, Industrial Court.

4. The complaint (ULP) No. 442 of 1992 has been filed by 19 employees. In (ULP) complaint No. 542 of 1991 the Union has taken up the cause of 11 employees who were

engaged as sweepers from 1985 and 1988 in various depots of the Corporation. In ULP Complaint No. 574 of 1991 the annexure shows that the Union has taken the cause of 16 employees from the Bombay Central Depot, 19 employees from Kurla-Nehrunagar Depot and 25 employees from Parel Depot and 3 employees from Panvel Depot.

5. The case of the Complainant is that the persons enumerated in various complaints above referred to, were employed by the Corporation in various depots of the Corporation for cleaning ST buses. They are doing the work of sweeping, cleaning the passenger buses. They are also cleaning and washing rams and they are to see that the car washers and water pumps are working properly. They are equally cleaning the area near the diesel pumps. They were also doing other related work as directed by the Supervisor. They have stated that they have worked in 1 to 2 shifts and sometime even in 3 shifts and each of the employee has completed 240 days in a year. They have stated that they are continuously in service, some from the year 1980, some from the year 1985 till the date of filing of the complaint. They have stated that for number of years they have been treated as casual workers by the Corporation and are being paid at the piece rate basis, i.e., initially they were paid at the rate of Re.1/- per bus which was later on revised to Rs.2/- per bus.

Therefore, it is their contention that the Corporation is indulged into unfair labour practice under Item Nos. 5 & 6 of Schedule IV of the said Act. The cause for filing the complaint is that in the year April 1992 the new cleaners are employed by the Corporation and they were given all regular benefits and thus the Corporation has indulged into an act of unfair labour practice by showing favouritism to one side without any merits.

6. So far as the Corporation is concerned, the Corporation has come forward with various contentions though the Corporation has admitted that these employees were working with the Corporation on piece rate basis, the Corporation has denied that the Corporation has committed and/or indulged in any unfair labour practice. According to the Corporation, the Corporation is constituted under the provisions of the Road Transport Corporation Act, 1982 and is controlled by the Government of Maharashtra. The policies of the Corporation are independently framed by the Board of Directors of the Corporation which are nominated by the Government.

7. The Corporation has stated that the employment in the Corporation is regulated by the Standing Orders. The Complainant - employees were not regular basis sweepers and cleaners. Initially prior to 1985 the work of cleaning

the buses was being carried out through the helpers. However, the helpers refused to clean the buses therefore by way of a stop-gap-arrangement, the complainant - employees were asked to clean the buses at the rate of Rs.2/- per bus and the work was given as and when available. It is further their case that the Corporation has framed General Standing Order No. 503 which regulates the mode of appointment in the Corporation on regular basis. The procedure is laid down by the said General Standing order for selection and appointment of the candidates. In order to get selected as per the procedure provided under the said Standing Order, names of the employees shall be recommended by the Employment Exchange and that the Corporation has to interview and select the employees by duly constituted committees for the said purpose. Since the complainant-employees have not been selected as per above referred procedure, they cannot claim that they are the regular employees and that they are entitled to be absorbed and/or regularised, otherwise it will amount to back-door entry. The Corporation further states that since the posts were non existent, there cannot be fixation as against non existent posts. It is clarified that the posts of cleaners which were created later on have been decided to be filled in only by way of persons appointed on compassionate ground. Therefore, these workers cannot be considered for regularisation as against

the said posts. The Corporation thus denied the relationship of employer and employee. It also contended that these employees were given the work on contract basis to clean the buses at the specified rate as and when available. Therefore, there is no relationship of the employer and employee.

8. All these rival contentions have been considered by the courts below and the facts which are now crystalised for our consideration are as follows:

Till 1980 the work of cleaning the ST buses was being carried out by the regular employees of the Corporation who were classified as helpers. However in 1980 helpers who were carrying out the work of sweeping refused to work and have approached the Court. Therefore, since 1980 the Corporation started to give the said work to the complainant and persons like complainant and since then the Complainant and employees represented by Union are continuously working as cleaners. Initially the rate of sweeping of the buses was Re.1/- per bus, it was later on enhanced to Rs.2/- per bus by Circular dated 16th October 1990 and that the Complainant and

similar workers were attending the duty in one shift to three shifts, as per directions of the Officers of the Corporation and accordingly attendance record is maintained by the Corporation. In respect of the casual workers, the Corporation issued this circular on 30th July 1990, 24th July 1990 and 30th July 1992 and Complainant's employer were governed by these circulars. By Circular dated 30th July 1992, the directions were issued that henceforth the casual labourers on piece rate basis should not be appointed. However, all the employees of which we are considering the case have been appointed as piece rate shift workers prior to 30th July 1992 and they are not covered by the bar on employment as per the policy of the Corporation. On the contrary, they were employed as piece rate workers as per the various circulars issued by the Corporation from time to time. Since the work was being carried out prior to 1980 through the some of the helpers, this aspect establishes that the permanent and perennial work was available with the Corporation, namely, cleaning of the buses. Then only the dispute which was started was; as to who shall clean the buses, i.e., whether the

helpers who clean the buses and/or there shall be separate post of Swacchak (Cleaners) and during this period all these present employees were employed by the Corporation on piece rate basis. Admittedly, in the year 1992, the post of the Swacchaks were created by the Corporation by converting the part of helpers into Swacchaks but these posts were reserved for appointment on compassionate ground, though the Corporation was aware about the number of workers working on piece rate basis with the Corporation since 1980 onwards by way of stop gap arrangement. It is equally an admitted fact that none of these piece rate employees cleaning the buses were appointed by following the procedure as laid down in General Standing Order No. 503 which is applicable to the Corporation.

9. Mr. Hegade, learned counsel for the Corporation submited in respect of Complaint (ULP) Nos. 542 & 574 of 1991, that these complaints which are filed by the Union, are not tenable in view of Section 21 of the said Act. The learned counsel submitted that (ULP) complaints which have been filed by the Union are under items 5, 6, 9 & 10 of Schedule-IV of the said Act. However, the complaint under

Item No.6 cannot be filed by an Union since the complainant union is not a recognised union. According to the learned counsel, the complaint in respect of Item 2 & 6 of Schedule-IV of the said Act can only be filed by a recognised union, and if there is no recognised union to appear in the complaint, the said complaint can be filed by an employee himself, as provided in Section 21 of the said Act. The learned counsel emphatically submitted that Section 21 read with Section 28 of the said Act leads to the only one inference, namely, the complaint in respect of Item 2 & 6 of Schedule-IV of the said Act can only be filed by a recognised union and no other union than the recognised union can file the said complaint. Therefore, it is submitted that since Complaint (ULP) Nos. 542 & 574 of 1991 have not been filed by the employee concerned, in the absence of the recognised union to appear for them, the said complaints filed by an unrecognised union is not tenable and sustainable in law. He submitted that the finding recorded to that effect by the Industrial Court are justifiable. He submitted that the findings recorded by the Single Judge on this point are not proper and required to be set aside.

. The learned counsel appearing for the Union submitted that the complaint under section 28 of the said Act can be filed by any union. For that purpose, he

invited our attention to Section 28 of the said Act, more specifically, to the fact that the complaint can be filed by any union or any employee or employer or investigating Officer. Therefore, he submitted that section 21 cannot be an embargo for the unrecognised union to appear in the matter. It is further submitted by the learned counsel that, so far as the Corporation is concerned, at the relevant time, when the complaints were filed there was no recognised union and therefore any union, though not recognised one, could file the complaint. Therefore, the complaint filed by the Petitioner is proper one. Mr.Hegade learned counsel submitted that when the Legislature has specifically provided that the complaint in respect of Items 2 & 6 of Schedule -IV of the said Act has to be filed by the recognised union only, then even though there is no recognised union, other union cannot file the complaint. He submitted that it will be against the legislative mandate. Therefore, he again emphasised that the complaint shall have been filed by the employee himself. Therefore, the complaint filed by the Union is not tenable.

10. Section 21(1) of the said Act is for our consideration since the Corporation is an "Industry" governed under the Industrial Disputes Act. Sub-section (2) of Section 21 is applicable to an industry wherein the Bombay Industrial Relations Act is applicable. Sub-section

(1) of Section 21 is as follows:

> "No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union:
>
> Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices."

. Item Nos. 2 & 6 of Schedule-IV of the said Act are as follows:

> Item 2: To abolish the work of regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.
>
> Item 6: To employ "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

11. Needless to state that both these items pertaining to unfair labour practices are of the general importance and as a result of the said unfair labour practices not only a particular employee will be affected but equally a large number of employees on strike and/or employees working as badlis, casuals or temporaries will be

affected. Therefore, these subjects have been specifically assigned to the recognised unions and therefore right to agitate as against these subjects has been assigned to the recognised union only. However, the question arises what will happen if there is no recognised union in the said industry and/or there is recognised union but the said recognised union is not coming forward to appear. Out of these two contingencies, in the present matter we are not required to consider what happens if the recognised union is in existence in the industry, but is not appearing and/or is not coming forward, then whether unrecognised union can represent the employees for items 2 & 6 of Schedule - IV of the said Act. We are not considering this question, because for the decision of the case in hand this is not the point at issue. The point in issue before this court is, when there is no recognised union in the said industry, then in that circumstances, whether the unrecognised union working in the said industry can file a complaint or not.

. In short, whether it will be proper to hold that when there is no recognised union in the industry covered by the Industrial Disputes Act, it is only the employee concerned who can file the complaint under items 2 & 6 of the Schedule - IV of the said Act and the unrecognised union cannot file the said complaint.

12. In this respect, the reference can be made to the following judgments:

(A) **Petroleum Employees' Union v/s. Bharat Corporation Limited, 1983, reported in Mah.L.J. page 618.** The Single Judge of this Court in the said matter, dealing with this aspect has held in paragraph 5 of the said judgment;

> "The correct interpretation to place upon Section 21 is this: Where there is a recognised union only that recognized union can be allowed, on behalf of an employee, to appear or act or be represented in proceedings relating to unfair labour practices specified in Items 2 & 6 of the fourth schedule. Where there is no recognised union an employee may himself appear or act in any proceeding relating to such unfair labour practice. This does not mean that an unrecognised union cannot act or appear in a proceeding relating to such unfair labour practice. It can represent an employee or the employee may appear himself if he so chooses."

(B) Another judgment is 1992(I) Bom.C.R. 286 Dyes and Chemical Workers Union v/s. Asian Chemicals Works and Ors. The Single Judge of this court relying upon the above referred judgment reported in 1983 Mh.L.J. 618, observed that;

> "Mr. Justice Barucha had thus ruled that where there was no recognised union, an employee himself can appear or act in a proceeding relating to unfair labour practices covered by Items 2 & 6 of Schedule IV of the MRTU & PULP Act which does not mean that an unrecognised union cannot act or appear in such a proceeding. Mr. Justice Bharucha had categorically ruled that an unrecognised union can represent an employee in such a proceeding. I am in respectful agreement with the view held by Mr. Bharucha and in that view of the matter, the learned Member of the Industrial Court was wrong in coming to the conclusion that the petitioner - union could not have filed a complaint of unfair labour practice covered by Item 6 of Schedule IV of the MRTU & PULP Act and could not have represented the workman in the Industrial Court under section 21 of the MRTU & PULP Act."

(C) Our attention was also invited to **1995(I) CLR 607 (Shramik Utarsh Sabha V/s. Raymond Woollen Mills Ltd & Ors..** The question which was considered by the Apex Court was:

> "Does a representative union under the Bombay Industrial Relations Act, 1946 (BIR Act) have the exclusive right to represent the employees of the concerned industry in complaints relating to unfair labour practices under the MRTU & PULP Act, 1971 other than those specified in items 2 & 6 of Schedule IV thereof ?"

The Court has ultimately held in paragraph 14 that;

> "Section 21 of the MRTU & PULP Act upon which emphasis was laid on behalf of the appellants, states that no employee in an undertaking to which the provisions of the Industrial Disputes Act applies shall be allowed to appear or act or be allowed to be represented in any proceeding relating to the unfair labour practices specified in items 2 & 6 of Schedule IV except through the recognised union. It is important to note that the reference is to employees in an

> undertaking to which the Industrial Disputes Act applies and not to employees in an undertaking to which the BIR Act applies. Apart therefrom, the section permits an employee, not an union other than the recognised union, to so appear. The provisions of Section 21 do not, therefore, lead to the conclusion that an union other than a representative union can appear in proceedings relating to all unfair labour practices other than those specified in items 2 & 6 of Schedule IV."

. This was a case under the BIR and not Industrial Disputes Act. Even the Hon'ble Supreme Court has made a reference to this difference in the above paragraph. Learned counsel for the Corporation very empathetically tried to rely upon the statement "Apart therefrom, the section permits an employee, not an union other than the recognised union, to so appear" and, thus it is submitted that the said statement supports the contention raised by him. We are not in agreement with the learned counsel for the Corporation, because the Hon'ble Supreme Court was not considering Section 21(1) of the said Act, but it was considering Section 21(2) which is in respect of the industries covered under the BIR Act. The BIR Act and the scheme of Section 21(2) of the said Act are in consonance with each other. Therefore, the Apex Court has given the exclusive right in favour of the representative union. The provisions of the BIR Act very specifically lay down that, when there is no recognised union- who shall represent the dispute. Such provisions are not available in the

Industrial Disputes Act. For the first time, such provisions have been provided for in the said Act (MRTU & PULP Act). Therefore, Chapter-III in respect of the recognition of the union is only applicable to the unions which are working in an industry governed under the Industrial Disputes Act and not to the unions which are governed under the BIR Act. In the result, the ratio of the Apex Court in Shramik Uttarsh Sabha v/s. Raymond Woollen Mills Ltd & Ors. is not applicable to the facts and circumstances of the present case.

(D) This question has been considered by the Division Bench of this Court in a judgment reported in **2001 (II) CLR 359 in the matter of Warden & Co.(India) Ltd., Bombay v/s. Akhil Maharashtra Kamgar Union, Thane.** The Bench considered the question as follows;

> "Whether an unrecognised union is entitled to appear and act on behalf of the workmen of an industry governed by the Industrial Disputes Act, 1947, hereinafter referred to as the "I.D. Act", in a complaint relating to unfair labour practices other than those specified by items 2 & 6 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as the "MRTU & PULP Act".

. The Division Bench in paragraph 33 has observed that:

"Having given our fullest consideration to this submission, we are of view that sections 20 & 22 which confer rights on recognised and unrecognised union, respectively, are not determinative of the rights of Unions to appear in complaints relating to unfair labour practices. What is determinative as of the right to appear is Section 21(1) of the MRTU & PULP Act,read with Section 28 of the MRTU & PULP Act, which have the following effect:-

(a) That any Union or any employee or Investigating Officer may file a complaint for any unfair labour practice against an employer by virtue of Section 28 of the MRTU & PULP Act.

(b) Where the unfair labour practice complained of is in regard to items 2 & 6 of Schedule IV of the MRTU & PULP Act, the same can only be prosecuted by a recognised union by virtue of section 21(1) of the MRTU & PULP Act.

. In paragraph 42, the Court has further observed that:

"We, therefore, hold that it is not the exclusive right of a recognised Union to institute and prosecute a complaint under the MRTU & PULP Act in respect of an industry governed by the I.D. Act in relation to unfair labour practices other than those specified in items 2 & 6 of Schedule IV of the MRTU & PULP Act. We, therefore, uphold the judgment of the learned Single Judge in this regard."

. The above judgment of the Division Bench of this Court appears to be in the backdrop of the circumstances that the said Industry is governed under the Industrial Disputes Act, and there is recognised union and unrecognised union and in that event the recognised union contends that like provisions under the Bombay Industrial Relations Act, it has exclusive right to file a complaint in respect of any item, that means- even in respect of the other items excluding items 2 & 6 also the recognised union is claiming exclusive right. The said aspect can be gathered from paragraph 22 of the said judgment where the contention has been recorded in the following words;

> "The main contention urged by Mr. Kuldeep Singh, learned counsel for the employer, is that a recognised Union has the exclusive right to represent the employees in all or any complaint relating to unfair labour practice under the MRTU & PULP Act."

. However, for this court the question is required to be considered in a case where there is no recognised union in an industry, namely, the Corporation, at the relevant time when the complaints were filed by the Union.

. For this purpose, we may make a reference to Section 28 which reads as follows:

> "(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any investigating officer may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may be, under section 7, of this Act:"

13. Thus, section 28 is not making any distinction between the category of unions. It uses the word simplicitor "any union can file a complaint". Thereby for filing a complaint under section 28 the word "any union" will have to be given possible larger connotation, and therefore it means to cover every class of unions. That means, in the present case where there is no recognised union, an unrecognised union can file a complaint. Section 21 is only an exception and that has been analysed by the Division Bench of this Court in paragraph 33 in the above referred judgment (Warden & Co.(I) Ltd v/s. Akhil Mah. Kamgar Union). We concur with the view expressed by the Division Bench in paragraph 33. Further we are only elaborating and explaining, especially for an observation

appearing in paragraph 33(b), wherein it is observed that where the unfair labour practice complained of is in regard to items 2 & 6 of Schedule-IV of the said Act, the same can only be prosecuted by a recognised union by virtue of section 21(1) of the said Act. While these observations were made, the facts before the Division Bench were not disclosing that, there was no recognised union in the industry. Section 21 speaks about the rights of the recognised union. But if there is no recognised union in the industry then Section 21 will not have an application, because in that eventuality the only union in the industry will be unrecognised union. And even in that circumstances to hold that the unrecognised union cannot file a complaint under items 2 & 6 of Schedule IV of the said Act, and it is only the employee who can file the said complaint, will be leading to an absurdity.

. One of the reasons why the trade unions are functioning in the industry, because the individual employees are a weaker section or a feeble union and it has to bargain and fight against the mighty employer and, therefore, to protect the rights of the employees which is not possible for an individual employee, the trade union comes forward. Therefore, when there is no recognised union, but the unrecognised union is in the field, it will be appropriate to allow the said unrecognised union to

appear in the matter wherein the subject matter is an unfair labour practice under items 2 & 6 of Schedule IV of the said Act. The employee will be better represented by an union in a court than in an individual capacity if the unrecognised union is allowed to appear. One thing is to be borne in mind that the right exists provided the person is in existence. If the recognised union is not in existence, and thereafter also to contend that it is only the recognised union which can file a complaint in regard to items 2 & 6 is an absurdity; a right to be considered in favour of an non-est. And thereby to deny the existing unrecognised union from agitating the issues under items 2 & 6 of Schedule-IV of the said Act will be unjustifiable. Therefore, initially we analysed items 2 & 6 of Schedule IV and made it clear that they are of the general importance in which cases apart from an individual employee being affected, there will be a large number of employees who will be affected as a result of the indulgence of the employer in the said unfair labour practices. Therefore, we record that whenever there is no recognised union in the field working, it will be appropriate to allow the unrecognised union to file a complaint under section 28 even in respect of items 2 & 6 of Schedule IV of the said Act. Therefore, we hold that whenever there is no recognised union in the field, the complaint under items 2 & 6 of Schedule IV of the said Act can be filed by (a) an

individual employee concerned, and/or (b) the unrecognised union also can file a complaint under items 2 & 6 of Schedule IV of the said Act. Thus, we reject the contention raised by Mr. Hegde based on Section 21(1) to the effect that the Complaint (ULP) Nos. 542 & 574 of 1991 filed by the Union are not tenable. We are in agreement with the views expressed by the Single Judge, referred to above and with the Division Bench (in the case of Warden & Co., (I) Ltd (supra)). We accordingly clarify the position of an unrecognised union. We, therefore, hold that the findings recorded by the Single Judge that the Complaint (ULP) Nos. 542 & 574 of 1991 are tenable in law is confirmed and we find that these complaints are tenable in law.

14. Now coming to the main matter, the courts below have concluded that there is unfair labour practice under items 5 & 6 of Schedule IV of the said Act. So far as item 6 of Schedule -IV of the said Act is concerned it is: **"to employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."**

. Addressing on this issue, the learned counsel for the Corporation, Mr. Hegde submitted that these

persons were employed as a stop gap arrangement to carry out the work of the sweepers, since the helpers who were carrying out the said work have refused to clean the buses. It is submitted that these workmen were paid at the rate of Rs.2/- per bus and, that too as and when the work was available for them and that no fixed number of buses were being assigned to any of these persons. Thus, it is submitted that they were not the employees of the Corporation, but they were working on contract basis, and therefore they cannot be termed as "badlis and or casuals and/or temporaries". We do not find any force in the said submission of the learned counsel for the Corporation.

. It is an admitted position that prior to 1980, the work of cleaning the buses of the State Transport Corporation was being carried out by some of the persons employed as helpers with the Corporation. The work of cleaning the buses means- whenever the bus flying on the road, returns after completing the trip the said bus was required to be washed and cleaned by sweeper. Earlier, this work was being carried out by the helpers, and thereafter by the Complainants and employees represented by the Union. The helpers who were carrying out the said work prior to 1980, were regularly paid by time-scale. However, when the helpers refused to carry out the said work, the said work was given to the Complainants and employees

represented by the Union, initially at the rate of Rs.2/- per bus and later on at an increased rate. However, for that purpose, the Complainants and employees represented by the Union were expected to attend the shift. The evidence on record shows that minimum one shift of 8 hours is attended by the Complainants and employees represented by the Union, some of them even have attended 2/3 shifts per day as per the requirement of the Corporation. It was necessary to fill-in the attendance and they were working under the supervision of the officers of the Corporation. That means, they were expected to work throughout the shift/s and in that shift they were being paid at the rate of Rs.2/- per bus, instead of paying them on a daily wage rate basis. But one thing cannot be forgotten that evidence on record shows that there was ample work available to each of the employee and the employees were employed throughout the shift, whenever they attended the work. The cleaning of the buses before flying them on a scheduled route of the Corporation was a perennial obligation of the Corporation, because the Corporation is not supposed to provide only a transport service to the public at large, equally they are under the obligation to provide good hygienic buses which are duly cleaned, washed and sweeped by the sweepers. Otherwise their business is likely to be affected. Therefore, the work which was being carried out by these employees was the work of the

Corporation through which the Corporation was providing the monopolised transport service to the public at large in the State of Maharashtra. Therefore, the Corporation was an industry. The work was of the permanent and perennial nature. The only thing- the quantum of the work was dependent upon the transport buses available at a particular depot and the trips scheduled of those buses by the said depot. However, taking into consideration this work-load, the employees like the Complainants and employees represented by the Union were employed by the Corporation. Therefore, the only difference which the Corporation has made is the change in the mode of payment, namely, instead of paying them on daily wages their payment was fixed on the basis of buses cleaned. Had it been only the work of piece rate basis, it was not incumbent for the employees to attend the shift. But simultaneously with the piece rate basis system, it was coupled with the compulsory attendance of the shift. Thereby, it leads to only inference that these workers were employed as "badlis, and/or casuals" by the Corporation in the garb of piece rate workers. Thus, the only inference follows is that these employees were doing the work of the permanent and perennial nature and for carrying out the said work the Complainants and employees represented by the Union were employed as "Badlis, and/or casuals and/or temporaries". Under such circumstances, the submission of the learned

counsel for the Corporation that since these employees were the piece rate employees and they are the contractors is not acceptable and the same is rejected. We hold that these employees were working as "badlis, and/or casuals", since the regular helpers who were carrying out the said work had refused to work.

15. Learned counsel appearing on behalf of the Corporation, Mr. Hegde further submitted that there is no relationship of employer-employee, because these employees were not appointed by following the procedure as laid down in the General Standing Order 503, which regulates the mode of appointment to the various posts in the Corporation. He submitted that the said Standing Order provides an elaborate procedure for the recruitment of the employees by constituting the committees and inviting the names from the Employment Exchange and thereafter the interview and selection was done by the Selection Committee. He submitted that these employees were not selected by following the due procedure and there is no relationship of employer-employee. We are not in agreement with the learned counsel.

. No doubt, the Standing Orders referred to above provides a procedure for the appointment / recruitment to the posts in the Corporation, but it is to be noted that in

the said Standing Order, Clause-3 classified the employees into four categories, namely, Class-I, II, III & IV. It is further stated in the same clause that, Classes -III & IV include daily wage earners. It is further stated that in sub-clause (e) of Clause-3 that; "Posts the minimum of the payscale of which is below Rs.100/- and which are not included in Class-III posts and such other posts as may be specifically so declared by the Corporation shall be treated as Class-IV posts." This is being referred to because we are dealing with the employees of Class- IV posts. It is also evident from Clause-4 of the Standing Order No. 503 that it speaks about the procedure of recruitment, but there are two provisos to the said Clause,

those Provisos are :

> "Provided that, in case of vacancies of a purely temporary nature, leave vacancies and daily wages earners, where no person recommended by the State Transport Services Board or the Selection Committee concerned is available, the Competent Authority may appoint suitable persons, for a period not exceeding six months; provided further -
>
> Provided further that, in the case of immediate necessity, when no person from the approved list

is available, a purely temporary appointment may be made by the Competent Appointing Authority pending consultation with the Selection Authority concerned."

. Thus, these two provisos speak about the contingencies when the list of the selected candidates is not available with the Corporation. Further it is to be noted that Clause-5 speaks about the Committee which shall recommend the candidates. So far as the class-IV candidates are concerned, sub-clause(c) of Clause-5 states that such Selection Committee shall be "Divisional Selection Committee" and Divisional Controller is the head of the said Division and is equally the competent authority to appoint. This shows that where there is an immediate necessity and no person from the approved list is available a purely temporary appointment may be made by the competent authority pending consultation with the Selection Committee. Therefore, reading the Standing Order, it becomes clear that the Divisional Controller of the Division had such authority to appoint the said persons. Here also the case made out by the Corporation is that the helpers who were carrying out the work of sweeping have refused to carry out the said work, and therefore the Complainants and the other employees represented by the

Union were employed. Therefore, this employment was in view of the provisos aforesaid (Provisos to Clause-4). It was for the competent authority to carry out the consultation with the Selection Authority, as provided in the Clause-4 of the Standing Order No.503, and that is not the job of the employees. It is not the case of the Corporation that such consultation was carried out by the competent authority at any point of time since 1980 to 1992 and the said Selection Committee has refused these candidates. The Corporation is aware of these aspects of the matter. Therefore, basically we do not agree with the submissions of the learned counsel that the appointments of these employees were not in accordance with the General Standing Order. What we find is that, that the appointment of these candidates was in accordance with the Standing Order No. 503, more specifically Clauses- 3, 4 & 5 of the said Standing Order, as discussed above, wherein the power to hire the services of temporaries is given to the appointing authority and so far as Class-IV is concerned it was the Divisional Controller who had such authority. However, there was lapse of getting their services duly regularised through the Selection Committee and it is the lapse on the part of the appointing authority. For that purpose, the employees cannot be blamed. Therefore, we have to infer that the appointments of the Complainants and the employees represented by the Union were made as per the

Standing Order.

16. We would further like to make it clear that in case of such employees, the Corporation has issued circulars. Some of such circulars which have been referred to by the Industrial Court are of 30th July 1990 and 24th July 1990, by which the rates of the work done by these employees have been fixed by the Corporation. Therefore, apart from the Standing Order, there were certain circulars issued by the Corporation under which the employment of the Complainants and employees represented by the Union was governed and was approved by the Corporation and the payments were drawn. Therefore, it will not be proper to say that since the Complainants and the employees represented by the Union were not recruited by the Corporation by following the procedure as laid down in Standing Order No. 503, there is no relationship of the employer-employee. Such inference will be an absurd inference. Therefore, we reject the said contention.

17. Assuming for a moment what the learned counsel for the Corporation states is true, namely, that the Complainants and the employees represented by the Union were not recruited by following the due procedure laid down in Standing Order No. 503, still it will not be proper to

hold that there is no relationship of the employer-employee, because, in fact these persons were employed by the Officers of the Corporation which is an appointing authority for Class-IV employees and the Complainants and employees represented by the Union have rendered the services to the Corporation as well as the Corporation has paid them their remuneration. In this respect a reference is required to be made to the definition of "workman", as is revealed from Section 2(s) of the Industrial Disputes Act, 1947. As per the said definition "workman" means- *"any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,....."*

. Thus, applying the test of this definition to the facts of the present case, it will be revealed that the Complainants and employees represented by the Union were doing manual work of sweeping and cleaning buses and they were employed by the Corporation which is an industry for providing the transport services to the public at large. The services of the Complainants and employees represented by the Union were hired on payment of wages, to be paid at piece rate basis during the shift. Therefore, the Complainants and employees represented by the Union are "workmen" within the definition of "workman" in the

Industrial Disputes Act, 1947. For that purpose we can also look to the definition of the "wages" as is given in Section 2(rr) of the Industrial Disputes Act, 1947. It reads as under:

> "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, etc.,"

. Thus, it will be revealed that the payment made for cleaning and sweeping buses at the rate of Rs.2/- per bus during the period of 8 hours' shift is "wages" within the definition of "Wages" given in the Industrial Disputes Act, 1947, and for which the services are hired. Thereby, what we find that there was a relationship of employer-employee and the wages were paid to the employees who were doing the work of sweeping and cleaning the buses. We record our finding that apart from the General Standing Order, if the person is employed for hire or reward for any manual, skilled, unskilled, technical or operational work in any industry by the employer, the relationship of employer-employee comes into existence and accordingly in the present matter the Corporation is "employer" and the Complainants and employees represented by the Union are the

employees or "workmen" of the said Corporation. Therefore, the submission advanced by the learned counsel appearing on behalf of the Corporation is without any substance and we hereby reject the same.

18. Learned counsel Mr. Hegde further submitted that the sweepers and the cleaners were not employed in accordance with the General Standing Order - 503, therefore, their services cannot be regularised. He submitted that the Corporation is Government Corporation and there were no posts of the sweepers and Swachaks with the Corporation and, therefore the services of these employees cannot be regularised as against the non existent posts. He submitted that, therefore, there is no unfair labour practice under Item- 6. He further submitted that to allow or regularise the services of these employees will lead to the backdoor entry.

19. The learned counsel for the Corporation relied upon **1997 SC 3657 in the matter of Himanshu Kumar Vidarthi & Ors v/s. State of Bihar & Ors.** and submitted that the appointments made on the basis of needs of work and termination of their services cannot be construed as retrenchment so as to grant re-instatement and the backwages. He has also relied upon AIR-1996 SC 1565 in the matter of **State of Himachal Pradesh v/s. Suresh Kumar**

Varma & Another, and submitted that the appointments on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption.

. In the case of Himanshukumar Vidyarthi (supra) the facts were that; the Petitioner No.1 came to be appointed as Assistant, Petitioner No.2 as Driver and Petitioner Nos. 3 to 5 as Peons on different dates. They were appointed in the Co-operative Training Institute, Deoghar by its Principal. They are admittedly daily wage employees. After termination of their services, termination was called in question. The Hon'ble Supreme Court considered the question-: "Whether the Petitioners can be said to have been 'retrenched' within the meaning of Section 25-F of the Industrial Disputes Act, 1947?". While answering this question, the Hon'ble Supreme Court observed that:

> "every department of the Government cannot be treated as "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not

> appointed to the posts in accordance with the rules but were engaged on the basis of need of the work.. They were temporary employees working on daily wages... ..... The concept of "retrenchment", therefore, cannot be stretched to such an extent as to cover these employees."

. It is to be noted that first observations which the Apex Court has made is that the said department cannot be treated as Industry, and thereby concluded that the daily wages earner cannot be said to have been retrenched, because if the activity is not industry, then the application of the Industrial Disputes Act, is itself in question. Apart from that, the Apex Court was only considering the provisions of the Industrial Disputes Act for the Government Department and it was not considering the provisions like that of the MRTU & PULP Act, including Items 5 & 6, as we are considering. Therefore, the said ruling stands distinguished and is not applicable to the present case.

20. Another Ruling relied upon by the Corporation is AIR-1996 SC 1565, in the matter of State of Himachal Pradesh v/s. Suresh Kumar Varma & Anr. In this matter,

the Apex Court observed that-

> "It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly..... Appointment on daily wage basis is not an appointment to a post according to the Rules."

It is further observed in paragraph 4 that:

> .....The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class-IV employees recruitment according to rules is a pre-condition."

. Here also we find that the Apex Court was dealing with the post of the Assistant Development Officer and it comes from the Government Department. We equally find that the Court was not dealing with the provisions of the unfair labour practice.

21. The third judgment which is relied upon by the learned counsel for the Corporation is **2003 (III) CLR 458 in the matter of Karnataka State Road Transport Corporation v/s. B.B.Tabusi.** Heavy reliance is place by the learned counsel for the Corporation on this judgment. Because, according to the learned counsel for the Corporation the facts involved in the present case and the facts in the reported judgment are one and the same. He relied upon the observations in paragraph 15 & 16 of the said judgment, which are as follows:

> "15. The Tribunal has failed to take into consideration the very pertinent objection taken by the KSRTC in its statement. The appellant is a statutory body, the rules and regulation of appointment are governed by the statutory regulations. The nature of the posts and cadre strength are all regulated by rules. An

appointment can be made only to a existing post or sanctioned post, when there is no post, the appointment to a non-existing post is impermissible in law. The respondent claims to be a casual labour and any person working as a casual labour in Government department, in any of the statutory organisations or in any Government agencies, despite the fact that he completes 240 days of work he cannot claim any right of regularisation. The law has been made very clear by the Supreme Court in the case of Madhyamik Siksha Parishad, Uttar Pradesh v. Anil Kumar Mishra & Ors, AIR 1994 SC 1638 = 1994 II LLJ 977 (SC) wherein their Lordships have laid down in para 4 as under:-

> "We are unable to uphold the order of the High Court. There were no sanctioned posts in existence towhich they could be said to have been appointed. The assignment was an ad hoc on which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of

completion of 240 days work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947 are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days work does not under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service."

16. With distress, we note that in several cases, in a cavalier manner, the Labour Courts and Industrial Tribunals have been handling out the relief of reinstatement of casual and temporary workman in statutory bodies and governmental organisations, although there is no sanctioned post. Under the garb of exercise of powers under Section 11-A of the Industrial Disputes Act , the Labour and Industrial Tribunals cannot grant the relief of reinstatement amounting to regularisation and appointment to the non-existing post which

> otherwise not permitted in law. The provisions of Section 11-A cannot be abused and misused to circumvent the legal provisions relating to selection and appointment to statutory bodies and to the Government Departments and governmental agencies. We strongly feel that the Industrial Tribunals and Labour Courts should be seriously informed about the basic propositions of law in order they avert and avoid handing out illegal regularisation and appointment by way of reinstatement. Henceforth, we sincerely hope and anticipate that such illegal order would not be repeated by the Labour Courts and Tribunals."

. In this respect, we wold also like to point out that the Karnataka High Court was considering the case simplicitor under the Industrial Disputes Act and it was not considering the case in similar provisions like the MRTU & PULP Act, 1971. Thus, this case stands distinguished.

22. As against this, learned counsel Shri. Dharap has relied upon **1986 I LLJ (SC) 197 in the matter of H.D.Singh v/s. Reserve Bank of India & Ors.** He has very emphatically relied upon **(1996) 2 SCC 293 in the matter of**

Chief Conservator of Forests & Another v/s. Jagannath Maruti Kondhare & Ors. 1986 I LLJ 197 (H.D.Sing's case) is a case under the Industrial Disputes Act. In this case, the RBI employed the person to assist and help the Examiners of Coins/notes, called Tikka Mazdoor. He was paid daily wages. Tikka Mazdoor has to report to the Bank regularly in the morning to ascertain whether he could get work. At the time of appointment the employee was not a matriculate, but he passed the examination subsequently while he was in employment. A confidential circular dated 27th June 1976 was issued by the bank stating that matriculates cannot be retained in the list of Tikka Mazdoor. Reserve Bank wrote a letter calling upon the employee to state his educational qualification and he was also informed that his name would be struck off since he concealed his educational qualifications and that his services would e terminated without any notice and compensation. Thereafter the employee was not given work from July 1976 and his name was struck off from the list of Tikka Mazdoor. The employee was not told that his name would be struck off rolls of Tikka Mazdoor if he passed the matriculation. No written order was issued terminating the services of the employee. Industrial dispute was raised by the employee which was referred for adjudication. A legal preliminary objection was raised by the bank stating that there was no termination of service and consequently

Section 2A was not attracted. The bank further stated that the employee failed to inform the bank that he has passed the matriculation. Regarding violation of Section 25-F the bank stated that the employee has not worked for 240 days in any year. The Apex Court allowed the matter in favour of the employee holding that striking off the name of the workman from the rolls by the employer, amounts to 'termination of services' and such termination is retrenchment within the meaning of Section 2(oo) of the Act if such retrenchment is effected in violation of the mandatory provisions of Section 25-F, termination would be invalid. Employee's name has been struck off from the list of Tikka Mazdoor in violation of Section 25-F. It further held that in the absence of any records produced by the bank, the case of the employee that he has worked for more than 240 days has to be accepted as true. The Apex Court has also observed that: "direction that Tikka Mazdoor should not be engaged continuously but should be offered work on a rotation basis is an unfair labour practice as defined in Section 2(ra) of the Act read with item 10 of Schedule V. The bank has indulged in methods amounting to unfair labour practice, to deny the employee the benefit under the Industrial Law." The Court further observed that: "Employee has been denied job because he has become better qualified. It is sad experience to find employers trying to stifle the efforts of employees in their legitimate

claims seeking benefits under the Industrial Law by tiring them out in adjudication proceedings raising technical and hyper-technical pleas. Industrial adjudication in respect of bona fide claims have been dragged on by employers for years together on such pleas. It would always be desirable for employers to meet the case of the employees squarely on merits and get them adjudicated quickly and that would help Industrial peace."

23. Learned counsel Mr. Dharap further relied upon **(1990) 2 SCC 396 in the case of Dharwad Distt. PWD Literate Daily Wage Employees Association & Ors. v/s. State of Karnataka & Ors.** The Apex Court considered the regularisation of the casual workers with parity in pay and principle of equal pay for equal work. The Apex Court has found that implementation of the said principle by the instrumentalities of the State obligatory by virtue of Article 39(d) read with Articles 14 & 16 as also the socialistic philosophy adopted by the Constitution by adding the word 'Socialist' in the Preamble. Considering the case of daily rated casual workers working continuously for long under instrumentalities of the State, the Apex Court held that, services must be regularised with parity in pay and the scheme for regularisation was approved.

24. The most relevant case which Mr. Dharap relied

upon is **(1996) 2 SCC 293 (in the case of Chief Conservator of Forests v/s. Jagannath Maruti Kondhare).** In this case, the Apex Court has considered the case of daily rated workers by Chief Conservator of Forests, State of Maharashtra in Ahemdnagar District under the scheme of Panchgaon Parwati Scheme providing for social forestry. The Apex Court has considered the fact that the Casual workmen employed in schemes with permanent basis undertaken by the Forest Department of the State Government, working for 100 to 300 days in each year being continued as casuals for 5 to 6 long years. And, ultimately, the Court concluded that the State has indulged in unfair labour practice under item 6.

. In paragraph 19, 20, 21 & 22 of the said judgement, the Apex Court has observed that;

> "19. The Industrial Court has found the appellants as having taken recourse to unfair labour practice in the present cases because the respondents-workmen who had approached the Court had admittedly been in the employment of the State for 5 to 6 years and in each year had worked for a period ranging from 100 to 330 days. Ms. Jaising draws our attention in this

context to the statement filed by the appellants themselves before the Industrial Court, a copy of which is at pp. 75 to 76 of Civil Application No. 4375 of 1990. A perusal of the same shows that some of the respondents had worked for a few days only in 1977 and 1978, though subsequently they themselves had worked for a longer period, which in case of Gitaji Baban Kadam, whose name is at Serial No. 4 went up to 322 in 1982, though in 1978 he had worked for 4-1/2 days. (similar is the position qua some other respondents.)

20. According to Ms. Jaising the lesser number of days worked by say Gitaji in 1978, could have been because of his having sought employment in that year towards the fag end or it may also be because of the fact that to start with, a large number of persons were engaged, which by 1981-82 got settled around 60, as would appear from the statement at page 66 of the aforesaid appeal. It is brought to our notice that only 25 such persons had

approached the Industrial Court of Pune (this number is 15 in the other batch) and as regards these 25, there should not be any doubt that they had worked for long despite which they were continued as casuals, which fact is enough to draw the inference that the same was with the object of depriving them of the status and privileges of permanent employees. Learned counsel urges that on these facts it was the burden of the employer to satisfy the Industrial Court that the object was not as was alleged by the workmen.

21. Shri. Dholkia would not agree to this submission as, according to him, the item in question having not stopped merely by stating about the employment of persons as casuals for years being sufficient to describe the same as unfair labour practice, which is apparent from what has been in the second part of the item, it was the burden of the workmen to establish that the object of continuing them for years was to deprive of the

status and privileges of permanent employees. Ms. Jaising answers this by contending that it would be difficult for any workman to establish what object an employer in such a matter has, as that would be in the realm of his subjective satisfaction known only to him. She submits that we may not fasten a workman with such a burden which he cannot discharge.

22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record

we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workman at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution - care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the fact of both the types of work. If even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the

second question also against the appellants."

25. Thus, these three supreme Court cases lay down the guiding principle to decide the present case. It is required to be stated that two of the aforesaid cases, namely, 1986 I LLJ 197 (H.D.Sing's case) and **(1990) 2 SCC 396 - the case of Dharwad Distt. PWD Literate Daily Wage Employees Association & Ors. v/s.** State of Karnataka are the cases under the Industrial Disputes Act, 1947 while the case of the Chief Conservator of Forests v/s. Jagannath Maruti Kondhare [(1996) 2 SCC 293] is under the Industrial Disputes Act read with the MRTU & PULP Act, under which we are presently considering the case of the Corporation. On going through these cases it will be evident that the Apex Court has found that whenever there daily wage earner is kept for years together as daily wage earner, the Apex Court has come forward to regularise the services of them, as has been done in (1990) 2 SCC 396. Apart from that, now we have a statutory provision under the MRTU & PULP Act by way of item 6, declaring that if the employer employs the employees as badlis, casuals or temporaries and continues them as such for years together with the object of depriving them of the status and privileges of permanent employees, it is unfair labour practice.

26. In the present matter, initially the Complainants and the employees represented by the Union were appointed as a stop gap arrangement, but the question is- how long the State shall continue such arrangement, because it started in the year 1980 as a result of the helpers who were sweeping the buses refused to sweep the buses. However, the Corporation was aware of the fact that the work is/was of permanent and perennial nature, as discussed above. Therefore, the Corporation immediately engaged the services of the Complainants and employees represented by the Union and they are working as casuals since 1980. It requires to be stated that each of them has completed more than 240 days not only that but more than 5 to 6 years have been completed by them. It requires to be mentioned that the Industrial Court has observed that no evidence has been produced on record by the Corporation to demonstrate that during the period from 1980 to 1992 the Complainants and employees represented by the Union have not completed 240 days in a year. It is to be noted that the Industrial Court has pointed out that the charts which have been produced on record in respect of the attendance of the Corporation are of the subsequent dates to the filing of the Complaints in the Court, which shows the less working days. However, the Industrial Court has further observed that there is no challenge by the Corporation to

the working days and the years prior to the filing of complaints and no documentary evidence destroying the case of the employees have been brought on record. Thus, the Member, Industrial Court and the learned Single Judge of this Court have concluded that these employees have worked for years together as casual workers. In fact, since 1980 the Corporation became aware of the fact that the work of the Swachaks have been refused by the helpers and those helpers have approached to the Court. Ultimately, the Corporation has accepted their stand and it has created the new posts of Swacchaks. That posts were created in the year 1992. At that time, the Corporation was aware of the fact that the Complainants and employees represented by the Union are working since 1980 with the Corporation and most of them have completed more than 5 to 6 years with the Corporation. Probably these workers have waited with a hope that one day or other the Corporation will regularise their services. However, in the year 1992 they found that the Corporation in stead of regularising their services kept them as casual workers and regularised the services of the other employees on compassionate ground. When the posts of Swachaks were created, the Corporation should have considered the Complainants and employees represented by the Union for absorption or regularisation first. Instead the Corporation has taken a decision that these posts of Swachaks shall be maintained for the compassionate

appointment. It needs to be mentioned that the compassionate posts are also not recruited through the due recruitment procedure, but the employment is offered on compassionate ground to the heir of the employee on the death of the employee of the Corporation, so as to avoid the hardship to the family of the deceased or certain other contingencies. However, the fact remains that- for such appointment the recruitment procedure is not followed. Thereby, it establishes that the grievance of the Corporation that the Complainants and employees represented by the Union were not selected through the recruitment procedure and as such they are not employees of the Corporation and are not eligible for regularisation of the services is shallow, fictitious and sham ground. All these facts clearly establish, as observed by the Member, Industrial Court and the learned Single Judge of this Court, that the Corporation has indulged in unfair labour practice under item 6, namely, to employ employees as "badlis", casuals, or temporaries and to continue them as such for years together, with the object of depriving them of the status and privileges of permanent employee. We confirm the said finding of the courts below.

27. Now coming to item 5. Item 5 of Schedule -IV of the said Act reads as follows:

"To show favouritism or partiality to one set of workers, regardless of merits."

26. From the above discussion, it is revealed that the Complainants and other employees represented by the Union were employed to clean and sweep the buses as Swachaks since 1980 when the regular helpers refused to work. The work was assigned to them on shift basis on the system of attendance in shift and evaluation of the wages was based on number of buses cleaned, each bus being charged at Rs.2/-. We have already observed that this is casual employment. However, the payment which is being made was not on daily basis. It was not being paid at the minimum rate of wages. Above all, it was not a payment equivalent to the payment of the helpers who are carrying on the same work earlier. In fact, when the work was being carried out by the Corporation through helpers, the payment equivalent to the helpers should have been given to the Complainants and employees represented by the Union. That system was not followed by the Corporation. In the year 1992, when the posts of Swachaks were admittedly created by the Corporation, the Corporation fixed the time-scale for the post of Swachaks. No doubt, it was somewhat less than the helpers, however, even wages at that rate was not offered to the Complainants and other employees represented by the Union. The work which was being carried out by the

persons appointed on compassionate basis as Swachaks in the year 1992 and the work which the Complainants and employees represented by the Union were carrying out was not of a different category but it was one and the same. However, the learned counsel for the Corporation has argued that the permanent sweepers, who were doing the work of cleaning the buses, are by category themselves and the piece rate sweepers cannot be equated with them. They are not standing on the same footing and therefore there is no unfair labour practice under item No.5 of Schedule -IV of the said Act. Where one set of labourers is permanent and other set of labourers is daily wages, while considering the question of equal pay for equal work, it is to be found that whether these employees are doing the same work which is being done by permanent sweepers. It is admitted fact on record that there is absolutely no difference in their work, but one set of workers is getting higher wages only because they are considered as permanent and the other set of workers is getting paltry wages because they are paid on piece rate wages. In this respect we would like to make a reference to (1990) 2 SCC in the matter of Dharwad PWD Empl. Association V/s. State of Karnataka, wherein the Apex Court has considered the principle of equal pay for equal work for the daily wages and the permanent workers. So according to us, the permanently appointed Swachaks and the Complainants and other employees represented by the

Union working as casuals, are rendering the same services to the Corporation. Therefore, the Complainants and other employees represented by the Union are entitled to get equal wages. Since it is not given by the Corporation we find that the Corporation has indulged into unfair labour practice under item 5, namely, showing favouritism or partiality to one set of workers, regardless of merits. Thus, we record our finding that the Corporation has indulged into unfair labour practice under item 5 of Schedule -IV of the said Act.

27. So far as the challenge by the Complainants and other employees represented by the Union in respect of unfair labour practice under items 9 & 10 of the said Act is concerned, we find that there is consistent finding by the Member, Industrial Court and the learned Single Judge that the Complainants and employees represented by the Union have failed to prove the said unfair labour practice. The Complainant-Union has tried to persuade us that the Industrial Standing Orders are not followed by the Corporation and, thus the Corporation has violated item-9. But we would like to point out that the said Industrial Orders Act 1946 is not applicable to the Corporation, since there is an exemption granted under section 13-B of the Industrial Employment (Standing Orders) Act, 1946, by notification dated 8th May 1957. In the result we find

that the Complainants and employees represented by the Union has failed to prove the unfair labour practice under item-9 of Schedule IV of the said Act.

28. Item-10 is about indulgence in the act of force and violence. There is no evidence which shows that the force or violence was used by the employer as against the Complainants and other employees represented by the Union. Therefore, unfavir labour practice under item-10 of Schedule -IV of the said Act has been rightly rejected by the Member, Industrial Court and the learned Single Judge.

29. Lastly, we come to the reliefs to be molded in favour of the employees. The Member, Industrial Court and the learned Single Judge invoked the provisions of Section 30 of the said Act and molded the relief giving a permanent status to the employees including the Complainants and employees represented by the Union. Learned counsel for the Corporation, Mr. Hegade vehemently submitted that since the Complainants and other employees represented by the Union were appointed as against the non-existent posts, and as they were not duly recruited by following the procedure as provided in General Standing Order-503, there cannot be absorption and their services cannot be regularised, and the Court is not possessed of such power. In this respect, we would like to point out that this has

been considered by the Hon'ble Apex Court in the matter of **Chief Conservator of Forests v/s. Jagannath Maruti Kondhare** reported in **(1996) 2 SCC 293**. In paragraphs 25, 28 & 29, the Hon'ble Apex Court has observed that:

> 25. To bring home his submission regarding the unjust nature of the relief relating to regularisation, Shri. Bhandare sought to rely on the decision of this Court in Delhi Development Horticulture Employees' Union v/s. Delhi Admn. We do not think that the ratio of this decision is applicable to the facts of the present case inasmuch as the employment of persons on daily-wage basis under Jawahar Rozgar Yojna by the Development Department of Delhi Administration, whose claim for regularisation was dealt with in the aforesaid case was entirely different from that of the scheme in which the respondents-workmen were employed. Jawhar Rozgar Yojna was evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any

source of livelihood and, therefore, without any income whatsoever. It is because of this that the Bench observed that the object of the Scheme was not to provide right to work as such even to the rural poor, much less to the unemployed in general. As against this, the workmen who were employed under the schemes at hand had been so done to advance objects having permanent basis as adverted to by us.

28. Insofar as the financial strain on the State Exchequer is concerned, which submission is sought to be buttressed by Shri. Dholkia by stating that in the Forest Department itself the casual employees are about 1.4 lacks and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood of Rs.300 crores - a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri. Dholkia as the same has been brought out almost from the hat.

The argument relating to financial burden is one of despair or in terrorem. We have neither been impressed by the first nor frightened by the second inasmuch as as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forest Department or any other Department of the Government.

29. We wish to say further that if Shri. Bhandare's submission is taken to its logical end, the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed persons. To be fair to Shri. Bhandare it may, however, be stated that the learned counsel did not extend his submission this far, but we find it difficult to limit the submission of Shri. Bhandare to payment of, say fair wages, as distinguished from minimum wages. We have said so, because if a pay scale has been provided for permanent workmen that has been done by the State

> Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government. We cannot deny this relief of permanency to the respondents -workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularisation to which no objection can reasonably be taken, as already pointed out. We would, however, observe that the relief made available to the respondents is not one which wold be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on the merits of their own cases."

30. In this respect, our attention was also invited to observations made by the learned Single Judge of this Court in unreported judgment in Writ Petition No. 7524 of 2000 decided on 13th June 2001 in the matter of The

Division Manager, Division Wanprakalpa Office (West), Forest Development Corporation of Maharashtra Ltd v/s. Chimna Arjun Jadhav. The learned Single Judge has observed after quoting Section 30 of the said Act that;

> . On plain language of this provision, it is seen that it empowers the court not only to declare that an unfair practice has been engaged in or is being engaged in by that person, but also direct all such concerned persons to cease and desist from indulging in such unfair labour practice and to take such affirmative action, as may be appropriate in the opinion of the court to effectuate the policy of the Act. Section 32 of the Act stipulates that the Court has power to decide all matters arising out of any application or a complaint referred to it for the decision under any of the provisions of this Act. This is a non-obstante provision. Therefore, the discretion vested in the court, by virtue of the abovesaid provision, is very wide. It is open

for the court to pass any such order that would, in its opinion, be necessary to effectuate the policy of the Act. The decisions which have been relied upon by the counsel for the petitioner that the court cannot issue directions of regularisation and absorption in absence of sanctioned posts, are, therefore, inapplicable in view of the specific provisions in the Act of 1971. This provision authorises the court to issue all necessary directions to effectuate the policy of the Act which would include directing the employer indulging in unfair labour practice to create sanctioned posts so as to give status of permanency to the workmen. By the very nature of unfair labour practice stipulated in item 6 of Schedule -IV of the Act, once the court records a clear finding that the work performed by the employee is of permanent nature and perennial one, then, as a necessary corollary, it is the duty of the court to issue such directions

including direction to the employer engaged in commission of said unfair labour practice to create a sanctioned post so as to give status and privileges of permanent employee to the workmen."

31. These observations are recorded by the learned Single Judge after having considered the judgment of the Hon'ble Apex Court in the matter of **Chief Conservator of Forests v/s. Jagannath Maruti Kondhare** reported in **(1996) 2 SCC 293**. We accept the view expressed by the learned Single Judge in the above referred unreported judgment. Therefore, we find that the reliefs which have been granted by the learned Single Judge are rightly molded and no interference is necessary by us. In the result, we pass the following order.

O R D E R.

(1) Letters Patent Appeal Nos. 203 of 2001, 204 of 2001, 205 of 2001, 206 of 2001 and 207 of 2001 are hereby dismissed.

(2) The judgment and order dated 2nd August 2001 passed by the learned Single Judge of this Court in Writ Petition Nos. 3831 of

1995, 2441 of 1995, 2442 of 1995, 5801 of 1999, 1886 of 1997 is hereby confirmed.

(3) As prayed by learned counsel Shri. G.S.Hegade, this order shall remain stayed for a period of three months so as to enable the appellants to approach the Apex Court, if so desired.

(D.B.BHOSAE,J.) **(S.B.MHASE,J.)**